

KRAMER LEVIN NAFTALIS & FRANKEL LLP

April 29, 2013

BY E-MAIL

The Honorable Paul A. Crotty
 United States District Judge
 Daniel Patrick Moynihan United States
 Courthouse
 500 Pearl Street
 New York, NY 10007

Re: Residents for Sane Trash, Inc., et al. v. U.S. Army
 Corps of Engineers, et al., No. 12 Civ. 8456 (PAC),
 and Kellner, et al. v. U.S. Army Corps of Engineers,
 et al., No. 12 Civ. 8458 (PAC) –
May 7, 2013 Initial Case Management Conference

*These 2 cases are added in addition for the
 Pilot Project for Complex Civil Cases. The cases will
 proceed under the Court's individualized
 practices. With respect to the Civil Case Management Plan
 it need not be submitted prior to the May 7 conference
 a joint letter is not necessary. If plaintiffs wish to
 respond to the litig's letter of April 26, 2013, they may do
 so*

*So advised
 Paul M. Kelly
 OSD*

Dear Judge Crotty:

This firm represents the plaintiffs in *Kellner*, but this letter is being sent on behalf of counsel to all of the parties to both referenced actions. The Court recently scheduled the initial conference in these cases for 3:30 p.m. on May 7, 2013. In preparation for the conference, counsel held a telephonic "meet-and-confer" on April 29, 2013.

There is uncertainty among the lawyers as to whether, in preparing written submissions to the Court for next week's conference, the parties should follow Your Honor's Individual Practices or the Court's October 31, 2011 Standing Order for the Pilot Project Regarding Case Management Techniques for Complex Civil Cases, which the parties have been advised by electronic notice applies to these cases.

Your Honor's Individual Practices require that a joint letter and proposed Civil Case Management Plan be submitted three business days before the conference (May 2), while the Standing Order requires that a joint Initial Report addressing an "Initial Pretrial Conference Checklist" and other enumerated items be submitted seven days before the conference (April 30). The parties are endeavoring to prepare a joint submission that responds to the items enumerated in both the Individual Practices and the Standing Order but doubt that they can complete it by April 30.

I also wish to point out that it will not be possible for the parties to address the discovery items in a proposed Civil Case Management Plan or in an Initial Report submitted prior to the conference, because there is a fundamental disagreement between the plaintiffs on the one hand, who wish to proceed with document discovery, and the defendants on the other

MEMO ENCLOSED

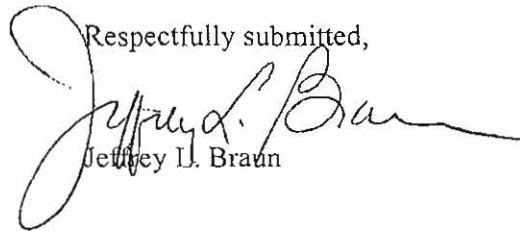
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hand, who take the position that discovery is inappropriate in these cases, and that the cases should be disposed of on an administrative record and dispositive motions. The parties will be prepared to discuss this disagreement at the conference and to address it in writing after the conference.

Under these circumstances, the parties request that the Court clarify which document should be followed by the parties in preparing for the conference, and when it should be submitted. Thank you for your attention to this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey L. Braun", is written over the typed name. The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

Jeffrey L. Braun

JLB:tim

cc: All Counsel